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Supreme Court of the United States

October Term, 1963

No. 16

BANCO NACIONAL DE CUBA,

Petitioner,

against

PETER L. F. SABBATINO, as Receiver, and F. SHELTON FARR, WILLIAM F. PRESCOTT, EMMET WHITLOCK, LAWRENCE H. DIXON, H. BARTOW FARR, ELIZABETH C. PRESCOTT, FABIO FREYRE and HELEN G. DOWNS, co-partners doing business as FARR, WHITLOCK & CO.

PETITIONER'S REPLY BRIEF

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Dated, October 16, 1963.

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PETITIONER'S REPLY BRIEF

Petitioner is in receipt of six separate briefs urging affirmance of the decision below. One brief was submitted by respondent, Farr Whitlock & Co. (hereinafter Farr), one by Compania Azucarera Vertientes-Camaguey de Cuba (hereinafter C.A.V.), which seeks to be substituted for Sabbatino as a party respondent,[1] and four on behalf of various *amici curiae*. The *amici* briefs are largely repetitious, and will not be considered in detail although passing reference will be made to some of them.

Most of the arguments made by respondent and by C.A.V. were anticipated by Petitioner's Brief, and hence the reply to them need not be extensive. Respondent Farr has argued two issues (Points I and IV of its brief), which have never been raised before, and an answer to those arguments will be made in Points I and II hereof.

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[1] The motion by C.A.V. to be substituted, made at the last Term of this Court, was consolidated with the argument on the merits. C.A.V. has separately briefed that motion, and we shall answer in a separate brief which is being filed simultaneously herewith.

POINT I

Petitioner, an agency of the government of the Republic of Cuba, is entitled to sue in the courts of the United States.

Respondent Farr, relying upon *McGoldrick* v. *Compagnie Generale*, 309 U. S. 430, urges upon the Court a new ground for affirmance, not presented to the Court of Appeals or the District Court. The argument is that the Republic of Cuba is "unfriendly," that does not grant "reciprocity," and the recognition of the Cuban government is "limited," and somehow insufficient to permit suit here by its agency.

The rule recited in the *McGoldrick* case, *supra*, following *United States* v. *American Railway Express Co.*, 265 U. S. 425, *Langnes* v. *Green*, 282 U. S. 531 and *Central Kentucky Natural Gas Co.* v. *Railroad Commission*, 290 U. S. 264, does state that an appellee or respondent may, on review, argue points not relied upon in the courts below. But this is true only so long as the record supports such argument. Here, respondent must go beyond the record for support.

Ever since *The Sapphire*, 78 U. S. (11 Wall.) 164 (1871), it has been consistently held that a foreign sovereign may sue in our courts. The only requisite is that the sovereign be recognized. *Government of France* v. *Isbrandtsen-Moller Co.*, 48 F. Supp. 631 (D. C. S. D. N. Y., 1943).

> "Among the more important consequences which flow from the recognition of a new Government or state are these * * * (3) it thereby acquires the right, which, at any rate according to English law, it did not previously possess, of suing, in the courts of the recognizing State; * * *." [Oppenheim, *International Law* (6th ed., Lauterpacht), § 75]

Whether or not a sovereign is recognized is a political question, as to which the views of the Executive Branch are

controlling. *Russian Government* v. *Lehigh Valley R. Co.*, 293 Fed. 133 (D. C. S. D. N. Y., 1919) *Agency of Canadian Car Co.*, v. *American Can Co.*, 253 Fed. 152 (D. C. S. D. N. Y., 1918).

Respondent concedes that the government of the Republic of Cuba has been recognized. It suggests, however, that comity extends access to our courts only to friendly sovereigns, and that the Republic of Cuba is not friendly. In the context of international law, "friendly" simply means not at war. Just as there are no degrees of recognition, there are no degrees of friendliness. That the official relationship between the United States and the Republic of Cuba is not cordial does not mean that the latter is "unfriendly" in the international law sense. So it was held with regard to Nazi Germany in a case involving the annexation of Austria in 1938. In *Land Oberoesterreich* v. *Gude*, 109 F. 2d 635 (C. C. A. 2, 1940), cert. den. 311 U. S. 670, the Court of Appeals stated, at 637:

> The state must first achieve recognition by our government, *Russian Republic* v. *Cibrario*, 235 N. Y. 255, 139 N. E. 259, but once recognized, the foreign sovereign, its subjects and its citizens, including its corporations, may be suitors in our courts.

Only a declaration of war suspends the right of a sovereign to sue. *Ex parte Colonna*, 314 U. S. 510; *The Ocean Gift*, 48 F. Supp. 625 (D. C. N. D. Cal., 1942).

The danger of a less precise definition of "friendly" is obvious. In its foreign relations the United States is involved in a dynamic world situation. Within recent months we have witnessed statements from the Executive Branch critical of numerous countries: France, the Soviet Union, Haiti, and South Vietnam, among others. Yet such attitudes can, and frequently do, shift drastically as the exigencies of the situation demand. No court could assume the burden of deciding, on the basis of such Executive statements, whether, at any moment, any particular state is so unfriendly as to be denied access to our courts.

The argument that reciprocity is a condition precedent to a foreign sovereign bringing an action in our courts is without any authority. Reciprocity has been held decisive only on the limited issue of whether a foreign judgment should be deemed conclusive in our courts. *Hilton* v. *Guyot*, 159 U. S. 113; *Compania Mexicana* v. *Spann*, 41 F. Supp. 907 (D. C. N. D., Tex. 1941). The comment of Judge Learned Hand on a proposed extension of the doctrine to other areas is most pertinent:

> Finally, the plaintiffs argue that we should not recognize captures made in the United Kingdom until it appears that that nation extends a like recognition to captures made here. The point depends upon a misunderstanding of the effect of the case of *Hilton* v. *Guyot, supra*, 159 U. S. 113, 16 Sup. Ct. 139, 40 L. Ed. 95. Whatever may be thought of that decision, the court certainly did not mean to hold that an American court was to recognize no obligation or duties arising elsewhere until it appeared that the sovereign of the locus reciprocally recognized similar obligations here. That doctrine I am happy to say is not part of American jurisprudence. * * * So far as I know, the doctrine of reciprocity has been confined to foreign judgments alone, and has no application to situations of this sort. [*Direction der Disconto-Gesellschaft* v. *U. S. Steel Corp.*, 300 Fed. 741, 747 (D. C. S. D. N. Y., 1924) aff'd 267 U. S. 22]

To require reciprocity as a condition for suit would impose upon the courts, in every case where a foreign government is plaintiff, the task of examining the foreign law. The question would be difficult enough in the case of other common law countries. But what are the rights of foreign suitors in Saudi Arabia? In South Korea? How can the question be determined with relation to the newly emerged countries whose jurisprudence has not yet developed? The problems are overwhelming.

Even were the question of reciprocity pertinent, there is nothing in the record to suggest that Cuban courts are closed to the United States or its citizens. Respondent cites a letter written by the Acting Legal Advisor of the Secretary of State to the District Judge in *Banco Para el Comercio Exterior de Cuba* v. *P & E Shipping Corporation*, pending in the United States District Court, District of Puerto Rico (Admiralty 12-60). The letter, however, is not only *dehors* the record, but is on its face a mere statement of opinion, devoid of any supporting facts. The letter was written in response to the direction of the Court of Appeals on remand of the case to the District Court. 307 F. 2d 415 (C. A. 1, 1962). The issue there had been raised by the Court of Appeals *sua sponte*.

Respondent omits to mention that the libelant in that suit responded with affidavits showing full reciprocity to be the fact. The files of Cuba's highest court show a large number of cases in which United States citizens were parties, and, in numerous instances, prevailed. Those papers are too voluminous to be reproduced here; however, petitioner has a copy and will file same with the Clerk of this Court if the Court should so direct. The District Court in that action has not yet handed down its decision after remand.

The case of *Dade Drydock Corp.* v. *M/T Mar Caribe*, 199 F. Supp. 871 (D. C. S. D. Tex., 1961) was decided only days after the severance of diplomatic relations between the United States and Cuba. Thus, that court's apparent confusion between the maintenance of diplomatic relations and recognition is understandable. Even there the Court stated, at 874:

> However, the action does not abate nor is it subject to dismissal. It simply means that the action is suspended until the Government of the Republic of Cuba is again recognized by the United States of America.

The problem was also dealt with in *Pons* v. *Republic of Cuba*, 294 F. 2d 925 (C. A. D. C., 1961), cert. den. 368 U. S. 960. There the Court of Appeals directed the parties to file briefs on the effect of severance of diplomatic relations. After consideration, the Court decided the appeal on the merits, in favor of the plaintiff Republic of Cuba.

POINT II

The acts of Farr, Whitlock & Co. constituted conversion.

Respondent suggests that it could not be liable in conversion, that its acts constituted instead a breach of contract.

The facts are not in dispute. Petitioner's agent, Societe Generale, presented the bills of lading to respondent for delivery in exchange for payment. The bills of lading were documents of title, and the holder was entitled to the possession of the cargo of sugar which they represented.

Respondent was not entitled to possession of the bills of lading without first making payment. It nevertheless, by the trick of requesting them for the limited purpose of examining them, obtained possession and immediately negotiated them (R. 13, 14, 25, 26).

Conversion consists simply in the wrongful taking, detention or disposal of property. *Pierpoint* v. *Hoyt*, 260 N. Y. 26 (1932). The cases cited by respondent are not in point. *Walter* v. *Bennett*, 16 N. Y. 250 (1857), was an action against plaintiff's agent for failure to turn over the proceeds of the sale of pork which had been entrusted to him. The court held that by reason of the agency relationship, plaintiff's recourse was not in conversion, but for breach of the agency contract. Similarly, *Industrial & General Trust* v. *Tod*, 170 N. Y. 233 (1902), was an action by a bondholder of a rail-

road against a reorganization committee acting pursuant to a contract with the bondholders. *Hutchings* v. *Torrey*, 203 Misc. 1038 (Sup. Ct. Broome Co., 1953) was an action to recover a sum of money loaned to defendant for a particular purpose, for which a note was given. The plaintiff was found to be simply a creditor.

In this case, although there was an underlying contract for the sale of the sugar, respondent was not entitled to it, or the bills of lading representing that title, until it paid the purchase price. The wrongful taking of the bills of lading was more than a refusal to pay the price. It was an exercise of dominion over petitioner's property.

The objection, in any event is not well taken. Even if the facts were to support only recovery for breach of contract, the complaint is sufficient. Petitioner's characterization of the facts as constituting "conversion" neither add nor detract from its claim. Under the Rules, the pleader is no longer bound by the "theory of the pleadings" doctrine. *Nord* v. *McIlroy*, 296 F. 2d 12 (C. A. 9, 1961); *Atwater* v. *North American Coal Corp.*, 111 F. 2d 125 (C. C. A. 2, 1940) (Concurrence of Judge Clark); *Nester* v. *Western Union Telegraph Co.*, 25 F. Supp. 478 (D. C. S. D. Cal., 1938); *Giesy* v. *American National Bank of Portland*, 31 F. Supp. 524 (D. C. Or., 1940); *Cohen* v. *Randall*, 137 F. 2d 441 (C. C. A. 2, 1943); 2 Moore's Federal Practice, §8.14.

POINT III

The fact that petitioner is a foreign government does not affect the application of the usual Act of State doctrine.

Farr argues in its Point II that the courts of one state will not "enforce" the acts of state of another, and seeks to distinguish the act of state cases on that ground. The cases cited in support of this position stand for the familiar

principle that the courts of one state will not enforce the penal or tax laws of another. This rule applies even as between the several states of the United States. See, for example, *Moore* v. *Mitchell*, 30 F. 2d 600 (C. C. A. 2, 1929), aff'd on other grounds, 281 U. S. 18. These cases have nothing at all to do with the situation before the Court here; they do not involve the act of a soverign state which has the effect of transferring title to property within its own territory.[2]

Respondent apparently recognizes that *United States* v. *Pink*, 315 U. S. 203, and *United States* v. *Belmont*, 301 U. S. 324, are difficult to reconcile with its view of the law. Distinction is sought to be made on the ground that the Soviet Union was "not unfriendly" to the United States at the time of the *Pink* case and that the case was argued here shortly after the attack on Pearl Harbor (Farr Br., p. 29). This seems a doubtful basis for deciding a case. How is *Belmont* to be distinguished? It was argued almost five years before Pearl Harbor.

Pons v. *Republic of Cuba*, 294 F. 2d 925 (C. A. D. C., 1961), cert. den., 368 U. S. 960, and *Rich* v. *Naviera Vacuba*, 197 F. Supp. 710 (D.C.Va. 1961), aff'd. 295 F. 2d 24 (C. A. 4, 1961), are not distinguished by respondent, although both seem to be directly contrary to its view. The precise point made by respondent was argued by *Pons*, but was not deemed sufficiently valid to warrant the granting of certiorari (see Petition for Certiorari in that case, pp 4-7).

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[2] Respondent's reference to Dicey (Resp.'s Br., pp. 19, 20) is disingenuous. The passage quoted has no relevance to the issue in this case. For the usual rule of conflicts, applying *lex situs* to determine title to personal property, see Dicey, *Conflict of Laws* (7th ed. 1958), Rules 86, 87 and 88, pp. 537-544. Application of that rule favors petitioner's position.

POINT IV

The Act of State doctrine is fully applicable to this case.

C.A.V. argues that despite the position taken by this Court in cases such as *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, and *Ricaud* v. *American Metal*, 246 U. S. 304, and despite the views expressed by the Executive Branch in this case and in *Rich* v. *Naviera Vacuba, supra* (see Petitioner's Original Brief, pp. 26, 27, 56), this Court should not apply the usual Act of State doctrine because the issue here does not require deciding a "political question" (C.A.V. Br., p. 22). It is suggested that the *Oetjen* case was overruled, or at least modified by some dictum in *Baker* v. *Carr*, 369 U. S. 186. It is further argued by C.A.V. that the State Department is incorrect in its views as to how a decision by this Court may affect our relations with other countries, "particularly in the states of South America" (C.A.V. Br., p. 27).[3]

The language referred to in *Baker* v. *Carr, supra*, if read in its entirety, supports petitioner. The Court there said, at 369 U. S. 211:

> • • • There are sweeping statements to the effect that all questions touching foreign relations are political questions. Not only does resolution of such issues frequently turn on standards that defy judicial application or involve the exercise of a discretion demonstrably committed to the executive or legislature; but many such questions uniquely demand single-voiced statement of the Government's views. Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed, in terms of the

[3] Several of the *amici curiae* makes similar argument. See, for example, the brief of North American Sugar Industries, Inc. at pp. 22-26, and the brief of the International Law Association, at pp. 52-56.

> history of its management by the political branches, of susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences of judicial action * * *. (footnote omitted)

See also *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304.

Petitioner does not and need not urge that "all questions touching foreign relations are political questions," nor does the Act of State doctrine require any such sweeping position. Petitioner argues only that the courts of this country should not examine into the validity of acts of a foreign sovereign affecting property within its own territory. We do not concern ourselves with problems such as those raised in cases like *Vermilya-Brown Co.* v. *Connell*, 335 U. S. 377, *Perkins* v. *Elg*, 307 U. S. 325, and other cases referred to by C.A.V. and various of the *amici curiae*. No one is here arguing that, in all questions involving foreign relations, this Court should refuse to act. C.A.V. devotes much of its energy to destroying a straw man.

The issue presented here is a much more narrow one and at the same time a much more important one. Moreover, it is an issue which the briefs submitted in opposition to petitioner have not discussed in any depth, although it is treated at considerable length by petitioner (Br., pp. 18-21) and by the brief submitted by the United States (Br., pp. 26, 27, 28). That relates to the very delicate question of the recognition, by the courts of the United States, of sovereignty of countries other than our own and the meaning and effect of such sovereignty. As we pointed out in our Brief, at pages 17, 18, it is difficult to see what content the concept of sovereignty can have if it does not include the right to make laws which are fully effective within the territory of the sovereign and which will be accepted as such by the courts of other countries.

As we previously pointed out, most of the nations of the world are new or are for the first time in recent history beginning to assert their sovereign rights. Many of these countries are quite poor in terms of natural resources or industrial wealth. But all of them are extraordinarily sensitive about their right to govern themselves. The brief of the United States, if anything, understates the situation when it suggests (p. 28) that many foreign states would resent a decision by the courts of this country holding that *their* laws violate *our* concepts of international law and will therefore not be given recognition here.

Read in this context, the tests suggested by the Court in *Baker* v. *Carr, supra,* would require a reversal of the decision below. The standards which must be applied are standards which defy judicial application, as we pointed out in our Brief. If we analyze the particular question posed in terms of the history of its management by the political branch of our government, there can be no doubt that the questions raised here have always been considerd to be political questions and have been handled as such. Indeed, the extended discussion in other parts of C.A.V.'s brief (pp 36-40) relating to many instances of the diplomatic handling of claims for compensation for nationalized property speak eloquently of the history of the management of this issue. In this sense the repeated expressions of opinion of the Executive Branch of our government (such as the language of Secretary Hull which has been quoted so frequently in this litigation[4]) supports petitioner, not respondent. It illustrates a long practice of treating this problem as a politcial, and not a judicial question. We think the problem must be continued to be handled that way.

If there ever was an area of foreign relations which required "the very delicate, plenary, and exclusive power

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[4] See C.A.V. brief, p. 36; Bar Association of the City of New York brief, p. 35; American Bar Ass'n brief, p. 14.

of the President" (*United States* v. *Curtiss Wright Export Corp., supra*, at 320), it is the area of the recognition of the sovereignty of all independent states, which is at the heart of this case.

Indeed, C.A.V. substantially admits the political importance of decisions made by the Executive in this area, in its discussion of the *Pink* and *Belmont* cases and in its footnote (p. 24) on the *Bahia de Nipe* case (*Rich* v. *Naviera Vacuba, supra*). The situation in the latter case is particularly enlightening because it presents an actual, not a suppositious, case, where the necessity of the free use of Executive discretion became apparent. That case arose in the following context:

On July 24, 1961, an armed passenger "hijacked" an Eastern Airlines plane with passengers and crew aboard and forced the pilot to take the plane to Havana (New York Times, July 25, 1961). The plane was returned by the Cuban Government on August 16 (New York Times, August 17, p. 8 col. 6). The very next day the captain of the Cuban freighter, Bahia de Nipe, "hijacked" that ship and brought it into Chesapeake Bay (New York Times, August 18, p. 8, col. 3). It was obvious that from the political point of view the United States could not refuse to return the freighter and its cargo in view of the close proximity both in fact and in time to the Eastern Airlines incident. Certainly, we could not do less than Cuba had done and the very day preceding.

A claim for the cargo on the ship was made by United Fruit Company, the basis for the claim being *exactly* the same as the basis for the claim made by C.A.V. The same Cuban decree was involved, the same violations of international law were alleged, the same "lack of compensation" was present and, indeed, United Fruit quoted the lower court decision in this case in support of its contention. The claim of the United Fruit was just as strong as and no stronger than that of C.A.V.

Both courts dismissed the libels and this Court denied a stay pending application for a writ. C.A.V. evidently agrees, and it justifies that result on the ground that it was "compelled by urgent considerations" (footnote*, p. 24).

Yet there was just as much a "case or controversy" in the *Bahia de Nipe* situation as there is in the present case; every argument made from pages 12 to 58 of C.A.V.'s brief could have been made with equal effect in that situation.

Why does C.A.V. believe the considerations in this case are any the less urgent than in the *Rich* case? Because they are less visible to C.A.V.? Because they are less dramatic? Because they have not yet reached the pages of the New York Times?

And what happens to the "development of international law" about which C.A.V. is so concerned (Br., p. 28), if such law is to be applied or rejected depending on "urgent considerations" which are entirely political and not legal? And who is to decide when such considerations exist and the degree of their urgency?

It is unavoidable and perhaps even desirable that members of the Bar should pretend that they are members of this honorable Court and express their views on constitutional issues with force and often with considerable ability and insight. It is not so clear that members of the Bar should also pretend that they are Secretary of State and qualified to advise the Government as to what judicial declarations will interfere with the conduct of foreign relations in a delicate area touching on the most important aspects of sovereignty, a question which confronts every new and undeveloped nation on our planet.

We return to the Act of State doctrine. This is its outstanding merit: neither the Bar nor this Court is required to consider such problems. They are political and should be determined by the political arm.

POINT V

The Cuban Decrees do not violate international law.

In general we believe our Original Brief will suffice to answer most of the contentions made with respect to the claim that the Cuban Decrees violate principles of international law. We shall confine ourselves to a short discussion of the compensation issue.

A.

First let it be noted that the nationalization decree in question did provide for compensation (R. 100). Furthermore the Cuban Government has not once, but many times, offered to negotiate with the Government of the United States on the issue of compensation for nationalized property.

Thus, in a note dated June 15, 1959, replying to a United States protest against the Agrarian Reform Law of Cuba, the Cuban government offered to discuss terms of indemnification of American owners of nationalized property. On June 27, 1960, President Dorticos, in a public address, offered to negotiate all differences between the United States and Cuba without reservation. In a diplomatic note dated February 22, 1960, Foreign Minister Roa offered to name a commission to discuss all differences between the parties. On July 18, 1960, the head of the Cuban Mission to the United Nations advised the Security Council of the United Nations that Cuba was prepared to settle all differences with the government of the United States. On September 26, 1960, Prime Minister Castro, at the meeting of the General Assembly, offered to discuss all open problems relating to the relationship between the United States and Cuba.

On October 16, 1961, Foreign Minister Roa, speaking at the General Assembly of the United Nations, offered to settle all differences with the United States, suggesting

that there be "an open agenda" for such meeting. In January, 1962, President Dorticos, at the Punta Del Este Conference, stated that Cuba was willing to consider idemnification of United States citizens who suffered losses. On October 8, 1962, President Dorticos, speaking at a General Assembly meeting, offered to negotiate all differences, again suggesting "an open agenda."

In a nationwide television broadcast on May 10, 1963, the following exchange took place between Prime Minister Castro and Lisa Howard, a representative of the American Broadcasting Company:

> Howard: Do you, in fact, ever intend to issue compensation for the expropriated lands and businesses?
>
> Castro: To whom?
>
> Howard: To the United States companies.
>
> Castro: Ah, the United States companies! Because we have compensated many Cubans-businessmen. We have compensated them.
>
> And in respect, in regards to the American interests, do they want to speak with us about that? If they want to speak with us about indemnification, in honorable conditions for Cuba and for the United States, we can speak.
>
> Howard: This is a question you are willing to discuss?
>
> Castro: Yes.[8]

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[8] Although not fully reported in the United States, all of the foregoing was summarized in a note to the United Nations submitted by the Cuban Government on July 24, 1963. The unpublished note is presumably available from the State Department. See, for some details; Official Records of General Assembly, 15th Sess., 872nd plenary meeting (9/26/60 Castro speech), Official Records of General Assembly, 16th Sess., 1032nd plenary meeting (10/10/61 Roa speech), Official Records of General Assembly, 17th Sess., 1145th plenary meeting (10/8/62 Dorticos speech), Official Records of Security Council, 15th year, 874th meeting (7/18/60 address by head of Cuban Mission). The television interview referred to was printed in full in I. F. Stone's Bi-Weekly, Vol. XI, No. 12, May 27, 1963, at p. 5.

B.

We must disagree with C.A.V. (Br., pp. 37, 38) that an agreement by a nationalizing state, reached through the processes of diplomacy, to give some compensation for property seized is a recognition of any rule of international law which *requires* compensation. Indeed, it is probably true that diplomatic settlement of such disputes is inconsistent with and would be frustrated by judicial decrees such as the one sought here. Here respondent in effect seeks partial restitution; by a process of self-help, it has seized part of the property nationalized, and proposes to turn the proceeds of the sale of that property over to C.A.V. Judicial approval of such action is totally inconsistent with the procedure which has long been followed by the United States in the settlement of similar disputes over compensation for nationalized property in foreign countries. For a full discussion of United States policy and past practices in this area, see Dawson and Weston, *Prompt, Adequate and Effective: A Universal Standard of Compensation?*, 30 Fordham L. Rev. 727 (1962).

As Dawson and Weston point out, a distinction must be made between isolated instances of nationalization occurring before 1917, and the extensive nationalizations during and since the Russian revolution. As the Mexican Government said in the correspondence quoted in Petitioner's Original Brief. at p. 47, such extensive nationalizations are carried out for the purpose of effectuating broad programs of social reform. Mr. Nicholas Doman, one of the authors of the *amicus* brief submitted by the American Bar Association, in an article written for the Columbia Law Review in 1948 and quoted in our original brief, at p. 38, noted that such extensive nationalization represents a revolutionary development and there is no point in seeking to apply nineteenth century concepts to them. He described the situation with political realism when he said:

> • • • if the social reforms introduced by nationalization laws were tied to the obligation to pay

> "full, adequate and prompt" compensation, as prescribed by international law, none could be carried out. Therefore compromise is necessary. (*Post-war Nationalization of Foreign Property in Europe.* 48 Colum. L. Rev. 1158.)

He summed up the situation in these words:

> The search for a solution to the problem of compensation for nationalized property is a task which requires initiative and imagination. Insistence on abstract legal rights with no consideration for political and economic realities will not provide such solution. (Doman, *op. cit.*, p. 1161)

Mr. Doman's views may have changed, but his comments of 1948 are even more accurate today—in the intervening years we have seen extensive nationalizations in Egypt, Ceylon, Iran, Indonesia, Brazil, Bolivia, and many other nations, in addition to Cuba.

No sign of the required initiative or imagination is displayed by the respondent, by C.A.V., or by the *amici* who support the respondent. Their views reflect the concepts of the sanctity of private property upon which our capitalism was built. But, for better or worse, many other nations do not share those concepts.

In actual fact, a twentieth century technique has been evolved for solving twentieth century problems. That technique is discussed fully in the Dawson and Weston article referred to above, and we shall not refer to it in detail now. It will be noted that, without exception, the issue of compensation for nationalized property has been handled as a political, not a justiciable matter. It will be noted further that in many instances the solution was tied in with a general treatment of other outstanding problems, and was often accompanied by trade agreements of one variety or another.

It took more than twenty-five years to reach a diplomatic settlement of the claims arising out of the Russian

nationalizations, and many other settlements have taken long periods of time. As the United States says in its amicus brief, (p. 33) there may some day be a settlement with Cuba. But the important fact to be kept in mind is that every one of these settlements has been treated, with realism, as a political matter. Judicial interference in the process can be nothing but destructive.

POINT VI

C.A.V. was a Cuban national.

In meeting our argument that C.A.V. was a Cuban national, and hence that questions of international law were not raised by the record, C.A.V. has cited a series of authorities which are totally inapposite (C.A.V. Br., pp. 52, 53). The textwriters and the cases cited support the proposition that in many cases nations have espoused claims by *shareholders* who are its nationals. But where is the significant authority supporting the contention, made here by C.A.V., that in considering a corporate claim, we may determine nationality of the corporation by considering the residence of its shareholders?

CONCLUSION

Summary judgment should be ordered for petitioner.

There are no factual issues to be decided, both lower courts having so held. No reason appears in this record for further prolongation of this litigation.

Respectfully submitted,

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Dated, October 16, 1963.